UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF: Curtis Specialty Papers Superfund Site 404 Frenchtown Road, Milford, NJ Curtis Papers, Inc. and CP Assignment, Ltd., Respondents.	UNILATERAL ADMINISTRATIVE ORDER FOR REMOVAL RESPONSE ACTIVITIES U.S. EPA Region 2 CERCLA Docket No. 02-2008-2023 Proceeding Under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §9606(a)

I. JURISDICTION AND GENERAL PROVISIONS

This Unilateral Administrative Order (the "Order") is issued to Respondents Curtis Papers, Inc., debtor-in-possession ("Curtis Papers") and C.P. Assignment, Ltd. ("CP Assignment"), as assignee for Curtis Papers, by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B. This authority was further redelegated on November 23, 2004 by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division ("ERRD") by EPA Region 2 Delegation No. 14-14-B.

This Order pertains to the Curtis Specialty Papers Superfund Site ("Site") (also known as the James River Paper Company Milford Mill Site), located at 404 Frenchtown Road, Milford Borough, Hunterdon County, New Jersey. The Site is the subject of a Removal Action under CERCLA, 42 U.S.C. §9601 et. seq.

This Order requires Respondents to conduct the removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual and/or threatened release of hazardous substances at or from the Site, by providing security at the Site as set forth in this Order.

EPA has notified the State of New Jersey of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

This Order applies to and is binding upon Respondents and Respondents' successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order.

Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

1. The Site is located at 404 Frenchtown Road, Milford Borough, Hunterdon County, New Jersey and consists of an industrial facility that manufactured paper products, which was in operation from approximately 1907 to 2003.

2. The Site is bordered by the Quequacommissacong Creek to the northwest, the Milford-Frenchtown Road to the east, farmland and the Crown Vantage Landfill Site to the south, and the Delaware River to the west. The area surrounding the Site is primarily residential with some limited commercial development.

3. The Site contains a complex of buildings including the Main Mill, the Coatings Facility, a cogeneration power plant, and a wastewater treatment plant. The Main Mill contains approximately 61 buildings with rooms spanning multiple levels, including a basement. The Coatings Facility operated from approximately 1935 to 1988; operations included the compounding of coatings and solvent-based resins, the application of coatings to paper products, and recovery of solvents by distillation.

4. The Site has been owned and operated by several entities including but not limited to: Riegel Paper Corporation, Federal Paper Board Company, Inc., Riegel Products Corporation, James River Paper Company, Inc., James River Corporation, and Crown Paper Company, Inc. It is currently owned by Curtis Papers and operated by Curtis Papers, as debtor-in-possession, and CP Assignment as assignee of Curtis Papers.

5. In 1999, Crown Paper Company, Inc., and its corporate parent, Crown Vantage, Inc. (collectively, "Crown Vantage") began investigation and remediation activities at the Site pursuant to a Memorandum of Agreement with the New Jersey Department of Environmental Protection ("NJDEP"), under the New Jersey Spill Compensation and Control Act. On March 15, 2001, Crown Vantage filed a petition under Chapter 11, Title 11 of the United States Code ("Bankruptcy

Code"). In 2001, Curtis Papers, then known as Royal Blue Papers, Inc., purchased the Site from the Crown Vantage bankruptcy estate.

6. On March 1, 2001, Curtis Papers entered into a Remediation Agreement with NJDEP, pursuant to the New Jersey Industrial Site Recovery Act ("ISRA"), assuming responsibility for the continued investigation and remediation of the Site. Curtis Papers established a Line of Credit Agreement with Fleet Capital Corporation, and in March 2001, entered into an agreement with NJDEP making $1,300,000 of the line of credit available as a remediation funding source.

7. Curtis Papers ceased operations in or about June 2003. On November 4, 2003, Curtis Papers filed an assignment in Probate Court for Hamilton County, Ohio ("Ohio Probate Court") for the benefit of its creditors pursuant to Ohio Revised Code Ch. 1313. CP Assignment was appointed as assignee for the benefit of the creditors of Curtis Papers on November 7, 2003. Pursuant to the Letter of Authority and Order Acknowledging Acceptance by CP Assignment, Ltd. of Curtis Papers, Inc., Assignment for the Benefit of Creditors, all of Curtis Papers' right, title and interest in all its assets, including the Site, were assigned to CP Assignment for the benefit of creditors, and CP Assignment was authorized to "take possession of the operating accounts and other banking accounts of the Company . . . to receive and collect any and all accounts receivable, rents, income or other sums due and owing to the Company . . . and to do all things and to enter such agreements in connection with the management, care and preservation of the personal and real property of the Company as the Assignee may deem advisable or necessary in connection with the care, preservation and/or liquidation of the personal and real property of the Company."

8. Also on November 4, 2003, creditors of Curtis Papers filed an involuntary petition pursuant to Chapter 7 of the Bankruptcy Code before the United States Bankruptcy Court for the District of New Jersey. The Site became part of the bankruptcy estate. The bankruptcy proceeding was subsequently converted to a voluntary case under Chapter 11 of the Bankruptcy Code. CP Assignment was appointed Chief Restructuring Officer of Curtis Papers by order of the United States Bankruptcy Court for the District of New Jersey on February 21, 2006.

9. On or about March 12, 2004, CP Assignment filed a motion in the Ohio Probate Court seeking an order giving CP Assignment authority to sell substantially all of the equipment located on the Site. The motion was granted and a telephonic equipment auction was held on or about April 30, 2004. Perry Videx, LLC ("Perry Videx") was the winning bidder at the auction. CP Assignment authorized access to the Site for Perry Videx to allow it to manage the sale and removal of assets from the Site.

10. On or about September 28 and 29, 2004, Perry Videx held an auction at the Site, to sell the equipment that Perry Videx had purchased at the April 30, 2004 auction. As a result of the September 2004 auction, equipment and salvageable material was removed from the Site, resulting in extensive damage to the Site, including damage to asbestos-containing material ("ACM").

11. On March 14, 2006, the New Jersey Department of Community Affairs, Division of Codes and Standards ("NJDCA") issued a Notice of Unsafe Structure, ordering CP Assignment to install a fence or barrier at the Site to prevent access by unauthorized persons.

12. On March 14, 2006, NJDCA issued two Stop Construction Orders, ordering CP Assignment to stop all construction work at the Site, including demolition. A cover letter, addressed to "Bankruptcy Trustee for Curtis Paper, Mr. Samuel Frankel" indicated that construction permits for work at the Site had been issued in error and were rescinded effective immediately.

13. By letter dated May 23, 2006, NJDEP notified CP Assignment, as assignee for Curtis Papers, and Bank of America (formerly Fleet Bank), that CP Assignment had failed to perform the remediation required under the March 2001 Remediation Agreement. By letter dated June 27, 2006, NJDEP reiterated that CP Assignment was in violation of the Remediation Agreement and an agreement reached during a December 15, 2005 teleconference. By letter dated June 30, 2006, NJDEP requested that Bank of America disburse the monies from the Line of Credit Agreement. NJDEP subsequently drew down on the Line of Credit.

14. On June 8, 2006 NJDCA inspectors encountered a demolition crew with a crane working at the Site. In addition, NJDCA personnel reportedly encountered thieves dismantling equipment and wiring.

15. On June 9, 2006, NJDCA issued a Notice and Order of Penalty ("June 9 Order") to CP Assignment for failure to comply with previous Orders issued by the Agency. The letter which accompanied the June 9 Order noted that "[h]aphazard demolition has seriously damaged the exteriors and interiors of various structures.... Containers of various sizes (some with chemical labels identifying their contents, some without), are scattered over the entire site, many of which have been spilled. It is quite obvious this site is being accessed by many unauthorized persons for unacceptable purposes. I cannot stress strongly enough how dangerous this site is to human life." The June 9 Order assessed a penalty of $2,000 for failure to comply with the March 14, 2006 Stop Construction Order and $1,000 for failure to comply with the March 14, 2006 Order to prevent access.

16. On February 13, 2007, EPA received a written request from NJDEP to conduct a removal site evaluation ("RSE") at the Site under CERCLA, 42 U.S.C. §9601 et. seq. During May and August 2007, EPA conducted field activities in support of the RSE.

17. On May 31, 2007, under Section 104 of CERCLA, 42 U.S.C. § 9604, and based upon the observations made as a result of the on-going RSE, the ERRD Director granted verbal authorization to initiate an Emergency Removal Action ("Removal Action") to address the threats associated with unsecured radioactive measuring devices, abandoned drums and containers containing chemicals, and unrestricted site entry.

18. From June 11, 2007 to the present, EPA performed the Removal Action at the Site. This action included removing approximately thirty (30) pallets of containerized waste (i.e., drums, pails, small containers), numerous vats, radiation sources and 6 abandoned 55-gallon galvanized steel drums labeled "NITROCELLULOSE" and "FLAMMABLE" from the Site. These wastes included hazardous substances that were acutely and chronically toxic, corrosive, reactive and/or

flammable. The environmental threats posed by these materials included the potential for airborne release and the potential for migration of contamination in the surface water and groundwater. The Removal Action included installation of a fence to secure the Site, to address the repeated vandalism and arson at the Site.

19. During the RSE, EPA personnel observed that careless removal of equipment from the Site, vandalism, trespassing, scavenging activities, arson, and weather exposure during the time since operations ceased at the Site have caused damage to Site structures, and have led to the dispersal of asbestos fibers throughout the Site. Process equipment, tanks, and metal have been torn from their places; there are holes in floors and walls; the structures are littered with debris, building rubble (cinder blocks, bricks, sheet rock), damaged equipment, ductwork, electrical conduit, and piping; offices containing file cabinets and facility records have been ransacked and impacted by mold due to exposure to flood waters and seasonal weather changes. Electrical transformers near the front of the Main Mill and behind the Power House have been removed and/or scavenged as evidenced by the missing equipment and the presence of damaged ceramic insulators scattered in those areas.

20. In addition, demolition activities by CP Assignment's contractors and CP Assignment's failure to maintain the Site have contributed to the damage, and to the release of hazardous substances. The damage has been further exacerbated by weather conditions including high winds blowing through the damaged structures, and flooding.

21. Several fires have occurred in the buildings in the recent past, and have resulted in structural damage. Local fire officials have responded to the Site, and State Police and Fire authorities have investigated conditions at the Site.

22. On March 28, 2008, and on April 1, 2008, EPA contacted counsel for Curtis Papers and CP Assignment to request that they take over responsibility for security at the Site from EPA. They declined to do so, stating that they lacked funds to take the steps required by EPA.

23. On May 13, 2008, EPA completed the RSE. The RSE concluded that there has been a release of hazardous substances at the Site, based on, inter alia, the following findings:

a. buildings at the Site have been damaged due to scavenging and vandalism, resulting in damage to ACM and presumed ACM inside and outside the Site structures;

b. friable asbestos has been documented throughout the Site, including in samples collected outside of the buildings;

c. elevated levels of polychlorinated biphenyls ("PCBs") have been identified in the soil near the power plant, in former discharge pipes leading from the Coatings Facility leading into Quequacommissacong Creek, and in the soil and sediment on the banks of the Quequacommissacong Creek; and

d. elevated levels of volatile organics compounds ("VOCs") have been identified in the subsurface soils between the Coatings Facility and the Creek as a result of past releases from a cluster of underground storage tanks.

24. On September 16, 2008, a "Request and Document Approval of a Verbal Authorization for an Emergency Removal Action, Ceiling Increase and Exemption to the 12-Month Limitation at the Curtis Specialty Papers (aka former James River Paper Company Milford Mill) Site, Milford Borough, Hunterdon County, New Jersey" ("Action Memo") was signed.

25. Like the RSE, the Action Memo documents the presence of residences and businesses nearby the Site, resulting in potential exposure of nearby human populations. The Action Memo states that site structures are not secure and continue to be accessed by people entering the Site, including bikers and teenaged children. Building exteriors and interiors are marked with graffiti. Bicycle and ATV tire marks are evident in the Main Mill. The Site has been posted by the NJDCA with a placard stating that the building is unsafe for human occupancy.

26. The Action Memo finds that people entering the Site could be exposed to airborne asbestos fibers. In addition, people entering the Site could carry asbestos fibers home in their clothing and hair, and expose other family members. The risk associated with exposure to asbestos fibers at the Site has been increased by the disturbance of process equipment and piping containing ACM during scavenging or vandalism. Chemicals present in tank heels and process piping could be released if disturbed by trespassers, causing harm to trespassers or nearby populations through direct contact or inhalation.

27. In order to enhance security at the Site, as part of the removal action authorized by the Verbal Authorization and the September 16, 2008 Action Memo, EPA repaired the fence and instituted guard service from 8 am to 9 pm on weekdays, and 24-hour guard service on the weekends.

28. On July 28, 2008 and August 13, 2008, EPA again contacted counsel for Curtis Papers and CP Assignment and advised that it is necessary for them to secure the Site, which is an asset of the bankruptcy estate. Counsel has informed EPA that Curtis Papers and CP Assignment do not have access to the cash in the Curtis Papers bankruptcy estate and has represented that Curtis Papers and CP Assignment would not provide Site security.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting the Removal Action, EPA has determined that:

1. The Curtis Specialty Papers Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. Materials found at the Site, identified in Section III, Paragraphs 23 and 26, of the Findings of Fact above, include "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including but not limited to asbestos, VOCs and PCBs.

3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. Respondent Curtis Papers is the current owner and operator of the Site, and owned and operated the Site at the time of disposal of hazardous substances. Respondent Curtis Papers is therefore a responsible party under Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2). Respondent CP Assignment has been assigned Curtis Papers' personal and real property, including the Site, by the Ohio Probate Court and has been given authority to maintain, care for, and preserve the real and personal property of Curtis Papers, including the Site; and it has been appointed by the United States Bankruptcy Court as Chief Restructuring Officer. By failing to maintain security at the Site, and allowing removal of equipment and demolition to proceed in a manner that caused damage to Site structures, Respondent CP Assignment has allowed conditions at the Site to deteriorate, causing or contributing to a release or threatened release of hazardous substances. Respondent CP Assignment is a current operator of the Site, and an operator at the time of disposal of hazardous substances, and therefore is a responsible party under Sections 107(a)(1), (2) and (n) of CERCLA, 42 U.S.C. §§ 9607(a)(1), (2) and (n).

5. The conditions described in the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined by sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

6. The conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare, or the environment. These conditions include, but are not limited to, the following:

a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

This is established by the presence of hazardous substances in the structures, soil and sediment at the Site, including asbestos, PCBs, and VOCs. Residences are located nearby the Site, and there is extensive evidence of frequent trespassing at the Site, creating the potential for exposure by direct contact with the soil, or by inhalation of vapors or contaminant-laden dust. In addition, fishing and other recreational use of the Delaware River could lead to exposure to contamination in the Quequacommissacong Creek;

b. hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

This is established by the presence of hazardous substances in tanks, sumps, pits and process piping which could be released if these items are disturbed, including in the piping that leads from the Coatings Facility to Quequacommissacong Creek. The Site has been repeatedly accessed by trespassers, and vandalism has led to releases of hazardous substances and could lead to further releases;

c. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

This is established by the presence of VOCs in the subsurface soil between the Coatings Facility and the Quequacommissacong Creek, and PCBs in the soil near the power plant, in former discharge pipes leading from the Coatings Facility into Quequacommissacong Creek, and in the soil and sediment on the banks of the Quequacommissacong Creek. The PCB contamination in the Creek will continue to be released into the Delaware River, especially during flood events;

d. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

This is established by the fact that the mill structures have not been maintained since Curtis Papers ceased operating, and have suffered significant damage due to removal of equipment, scavenging and vandalism, making them susceptible to ongoing damage from changing weather conditions and flood damage. The tall mill structures, open to the elements, provide a route for air currents to influence the condition and migration of asbestos fibers within and outside the Site. Heavy rains increase the potential for further migration of PCB-contaminated soils into the Quequacommissacong Creek, which flows into the Delaware River where people have been observed fishing. During flood events on the Delaware River, water flows in the opposite direction on the Quequacommissacong Creek, stirring up and availing the PCB-contaminated sediments for transport, and potentially further contaminating the creek bed and the floodplain upstream of the discharge pipe;

e. threat of fire or explosion;

This is established by the fact that fires have recently occurred in the Site buildings, resulting in structural damage. The wood construction of some of the structures, documented vandalism at the Site, and the presence of potentially reactive chemicals in process piping and tanks add to the threat of fire and explosion.

7. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The actions required by this Order are necessary to protect the public health, welfare, or the environment, and are consistent with CERCLA and the NCP.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondents comply with the following provisions, including but not limited to all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal activities required by this Order (the "Work") themselves or retain a contractor to perform the Work. Respondents shall notify EPA of Respondents' qualifications or the name and qualification of such contractor within ten (10) days of the effective date of this Order.[1] Respondents shall also notify EPA of the name and qualification of any other contractor or subcontractor retained to perform the Work under this Order at least ten (10) days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by Respondents or of Respondents' choice of themselves to do the Work. If EPA disapproves of a selected contractor or Respondents, Respondents shall retain a different contractor or notify EPA that they will perform the Work themselves within seven (7) days following EPA's disapproval and shall notify EPA of that contractor's name or Respondents' name and qualifications within five (5) days of EPA's disapproval.

Within ten (10) days after the effective date of this Order, Respondents shall designate a Project Coordinator who shall be responsible for administration of all Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. EPA retains the right to disapprove of any Project Coordinator named by Respondents. If EPA disapproves of a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within seven (7) days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondents.

The EPA has designated as its On-Scene Coordinator ("OSC"), Louis DiGuardia, of the U.S. EPA Region 2 Removal Action Branch. Respondents shall direct all submissions required by this Order to the OSC at the address listed in Section V, Paragraph 3.3, by certified mail.

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[1] "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next business day.

2. Work to Be Performed

Respondents shall perform, at a minimum, the following Work for the duration set forth in Paragraph 3.1 of this Section:

a. provide site security, including, at a minimum, the physical presence of a security guard between the hours of 8:00 a.m. through 9:00 p.m. Monday through Thursday, and 24-hour security service on the weekends (8:00 a.m. Friday through 8:00 a.m. Monday); and

b. repair and secure any breach of fencing at the Site within 48 hours of discovery of that breach.

3.1 Work Plan and Implementation

Within seven (7) days of the effective date, Respondents shall submit to EPA for approval a draft Work Plan containing a detailed description of how the Work described in Section V, Paragraph 2 above will be accomplished. The work plan shall incorporate, at a minimum, information on emergency contacts and repairs services, Site sign-in and entry procedures, sanitary services (i.e., port-a-john), communication (i.e., cell phone), and security rounds including electronic detex tags at strategic points around the facility. EPA may approve or require revisions to the Work Plan. If EPA requires revisions, Respondents shall have seven (7) days to revise and resubmit the Work Plan.

Within seven (7) days of EPA's approval of the Work Plan, Respondents shall commence the Work. Respondents shall perform the Work for two years, except that if response actions performed by EPA or another person at the Site resolve the conditions described above in Section IV such that EPA determines that it is no longer necessary for Respondents to continue performing the Work for the full two-year period, EPA will advise Respondents that they may terminate performance and submit a Final Report, as provided in Paragraph 3.4 of this Section.

3.2 Health and Safety Plan

Within seven (7) days of the effective date, a draft Health and Safety Plan ("HASP") which shall satisfy the requirements of 29 C.F.R. 1910.120, Hazardous Waste Operations Standards shall be submitted to EPA for approval. If performance of any subsequent phase of the work required by this Agreement requires alteration of the HASP, Respondents shall submit to EPA for review and approval proposed amendments to the HASP. EPA can provide an existing HASP used at the Site for review, comment and acceptance in order to expedite security implementation.

3.3 Reporting

Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order on the 1st day of every month after the effective date until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, any contacts with local law enforcement, anticipated problems, and planned resolutions of past or anticipated problems. All Site-generated information, such as sign-in logs and security detex tags, will be submitted as part of this report. If an event of significance occurs, such as a fire or injury, this shall be documented in writing and the written report shall be submitted to EPA within three (3) days of the event.

At least thirty (30) days prior to the conveyance of any interest in real property at the Site, Respondents shall give written notice of this Order to the transferee and written notice to EPA and the State of New Jersey of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section V, Paragraph 4 of this Order - Access to Property and Information.

The Work Plan and the Final Report (see Paragraph 3.4 below) and any other documents required to be submitted under this Order shall be sent to the following addressees:

3 copies to:

Louis DiGuardia, On-Scene Coordinator
U.S. Environmental Protection Agency, Region 2
Emergency and Remedial Response Division
2890 Woodbridge Avenue
Building 209 (MS-211)
Edison, NJ 08837

1 copy to:

Sarah P. Flanagan
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th floor
New York, NY 10007-1866

3.4 <u>Final Report</u>

Within thirty (30) days after completion of all Work required under this Order, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, and shall also include the following certification signed by a person who supervised or directed the preparation of the report:

> Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for

submitting false information, including the possibility of fine and imprisonment for knowing violations.

4. Access to Property and Information

Respondents shall provide access to the Site and, to the extent owned or under the control of Respondents, to off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of New Jersey representatives. These individuals shall be permitted to move freely at the Site and any necessary off-site areas in order to conduct actions which EPA determines to be necessary in relation to this Order.

Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within ten (10) days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. Respondents shall describe in writing their effort to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the Work described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondents for all costs and attorney's fees incurred by the United States in obtaining access for Respondents.

All data, information and records created, maintained, or received by Respondents or their contractor(s) or consultant(s) in connection with implementation of the work performed under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records shall, upon request of EPA, be made available to EPA without delay for review and copying, unless Respondents assert a privilege claim, subject to the limitations described below in Section V, Paragraph 5.

Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statute or regulations.

5. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for five (5) years following completion of the Work required by this Order. At the end of this five (5) year period and thirty (30) days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the five (5) year period at the written request of EPA.

Respondents may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Documents that EPA determines are confidential will be afforded the protections specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondents. In addition, EPA may release all such documents to NJDEP, and NJDEP may make those documents available to the public unless Respondents conform with applicable New Jersey law and regulations regarding confidentiality. Respondents shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific or engineering data relating to the work performed hereunder.

Respondents may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged. EPA may at any time challenge claims of privilege through negotiations or as otherwise provided by law or the Federal Rules of Civil Procedure.

6. Compliance With Other Laws

Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state and federal laws and regulations except as provided in Section 121(e) of CERCLA and 40 C.F.R. § 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental laws, and state environmental or facility siting laws. (see "The Superfund Removal Procedures for Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the HASP, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify OSC Louis DiGuardia at 732-906-6927, or in the event of his unavailability, the EPA Regional Response Center at 732-482-1000 during daytime hours (8:00

am to 4:30 pm) or the National Response Center at 800-424-8802 during evening hours (4:30 pm to 8:00 am) of the incident or Site conditions. If Respondents fail to take action, then EPA may respond to the release or endangerment and reserves the right to pursue cost recovery.

In addition, in the event of any release of a hazardous substance, Respondents shall immediately notify OSC Louis DiGuardia at 732-906-6927, and the EPA Regional Response Center at 732-482-1000 during daytime hours (8:00 am to 4:30 pm) or the National Response Center at 800-424-8802 during evening hours (4:30 pm to 8:00 am). Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under Section 103(c) of CERCLA and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.

VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 CFR § 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. EPA shall notify Respondents, and Respondents shall notify EPA, seven (7) days before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

VII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

Violation of any provision of this Order may subject Respondents to civil penalties of up to thirty-two thousand five hundred dollars ($32,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1) and subject to possible further adjustment of this penalty maximum consistent with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and the regulations promulgated thereunder, including the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and all amendments thereto. Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 § 9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

VIII. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual and/or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents.

IX. OTHER CLAIMS

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

X. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC. Modifications to any other portion of the Order may only be made in writing, signed by the Director of Region 2 ERRD.

If Respondents seek permission to deviate from any approved plan or schedule or Statement of Work, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XI. NOTICE OF COMPLETION

When EPA determines, after EPA's review of the Final Report, that the Work has been fully performed in accordance with this Order EPA will provide notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Respondents shall implement the additional removal activities and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved additional removal activities shall be a violation of this Order.

XII. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the Work, and the Removal Action is available for review at Edison Record Center, 2890 Woodbridge Avenue, Building 205, Edison, NJ 08837 (732) 906-6877 and at the Milford Public Library, 40 Frenchtown Road, Milford, NJ 08848 (908) 995-4072.

XIII. OPPORTUNITY TO CONFER

Respondents may, within five (5) days of the date that this Order is received by Respondents, request a conference with EPA to discuss this Order. If requested, the conference shall occur within fourteen (14) days of Respondents' request for a conference.

The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intend to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative.

Requests for a conference must be made by telephone followed by written confirmation mailed that day to:

Sarah Flanagan, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, N.Y. 10007-1866
Telephone: (212) 637-3136
Telecopy: (212) 637-3096

XIV. INSURANCE

At least seven (7) days prior to commencing any on-site work under this Order, Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of three million dollars ($3,000,000), combined single limit.

Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XV. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XVI. NOTICE OF INTENT TO COMPLY

Respondents shall notify EPA in writing not later than five (5) days after the effective date of this Order of Respondents' irrevocable intent to comply with this Order. Failure of Respondents to provide such notification within this time period shall be a violation of this Order by Respondents. If Respondents do not unequivocally commit in their written notification to perform the work required by this Order, they shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondents' written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA. Respondents' written notice shall be sent to the EPA addressees listed in Section V, Paragraph 3.3. The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be an acceptance of Respondents' assertions.

XVII. EFFECTIVE DATE

This Order shall be effective ten (10) days after the Order is signed by the Director of the Region 2 ERRD, unless a conference is timely requested pursuant to Section XIII above. If such conference is timely requested, this Order shall become effective three (3) days following the date the conference is held, unless the effective date is modified by EPA. All times for performance of ordered activities shall be calculated from this effective date.

IT IS SO ORDERED

BY: ______________ DATE: 9/30/08

George Pavlou
Acting Director, Emergency and Remedial Response Division
Region 2
U.S. Environmental Protection Agency

EFFECTIVE DATE: __________